

AMENDED IN ASSEMBLY JULY 2, 2009  
AMENDED IN ASSEMBLY JUNE 24, 2009  
AMENDED IN ASSEMBLY JUNE 16, 2009  
AMENDED IN SENATE APRIL 21, 2009  
AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 340**

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**Introduced by Senator Yee**  
**(Coauthor: Senator DeSaulnier)**  
(Coauthor: Assembly Member Torlakson)

February 25, 2009

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An act to add Article 9 (commencing with Section 17600) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as amended, Yee. Advertising: automatic renewal and continuous service offers.

Existing law prohibits any person with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, from making or disseminating or causing to be made or disseminated before the public in this state, or in any state, any statement concerning that property or those services that is untrue or misleading, and that is known to be untrue or misleading, or for any person to make or disseminate or cause to be made or disseminated a statement as part of a plan or scheme with the intent not to sell that property or those services so advertised at the

price stated. A violation of these provisions is a crime, punishable by specified penalties, and a violation of those provisions is subject to specified civil liability.

The bill would, on and after June 1, 2010, make it unlawful for any business making an automatic renewal, as defined, or continuous service, as defined, offer to a consumer in this state to, among other things, fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner, charge the consumer for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent, and to fail to provide the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. In the case of a material change in the terms of the automatic renewal or continuous service offer, the bill would require the business to provide the consumer with a clear and conspicuous notice of the material change and information regarding how to cancel. The bill would declare the intent of the Legislature in this regard.

The bill would provide that in any case in which a business sends any goods, wares, merchandise, or products to a ~~customer~~ consumer, under a continuous service agreement or automatic renewal of a purchase, without first obtaining the ~~customer's~~ consumer's affirmative consent, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional gift to the ~~customer~~ consumer.

A violation of these provisions would not be a crime, but would be subject to enforcement by any available civil remedies, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 9 (commencing with Section 17600) is  
2 added to Chapter 1 of Part 3 of Division 7 of the Business and  
3 Professions Code, to read:

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5 Article 9. Automatic Purchase Renewals

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7 17600. It is the intent of the Legislature to end the practice of  
8 ongoing charging of consumer credit or debit cards or third party

1 payment accounts without the consumers' explicit consent for  
2 ongoing shipments of a product or ongoing deliveries of service.

3 17601. For the purposes of this article, the following definitions  
4 shall apply:

5 (a) "Automatic renewal" means a plan or arrangement in which  
6 a paid subscription or purchasing agreement is automatically  
7 renewed at the end of a definite term for a subsequent term.

8 (b) "Automatic renewal offer terms" means the following clear  
9 and conspicuous disclosures:

10 (1) That the subscription or purchasing agreement will continue  
11 until the consumer cancels.

12 (2) The description of the cancellation policy that applies to the  
13 offer.

14 (3) The recurring charges that will be charged to the consumer's  
15 credit or debit card or payment account with a third party as part  
16 of the automatic renewal plan or arrangement, and that the amount  
17 of the charge may change, if that is the case, and the amount to  
18 which the charge will change, if known.

19 (4) The length of the automatic renewal term or that the service  
20 is continuous, unless the length of the term is chosen by the  
21 consumer.

22 (5) The minimum purchase obligation, if any.

23 (c) "Clear and conspicuous" or "clearly and conspicuously"  
24 means in larger type than the surrounding text, or in contrasting  
25 type, font, or color to the surrounding text of the same size, or set  
26 off from the surrounding text of the same size by symbols or other  
27 marks, in a manner that clearly calls attention to the language. In  
28 the case of an audio disclosure, "clear and conspicuous" and  
29 "clearly and conspicuously" means in a volume and cadence  
30 sufficient to be readily audible and understandable.

31 (d) "*Consumer*" means any individual who seeks or acquires,  
32 by purchase or lease, any goods, services, money, or credit for  
33 personal, family, or household purposes.

34 ~~(d)~~

35 (e) "Continuous service" means a plan or arrangement in which  
36 a subscription or purchasing agreement continues until the  
37 consumer cancels the service.

38 17602. (a) It shall be unlawful for any business making an  
39 automatic renewal or continuous service offer to a consumer in  
40 this state to do any of the following:

1 (1) Fail to present the automatic renewal offer terms or  
2 continuous service offer terms in a clear and conspicuous manner  
3 before the subscription or purchasing agreement is fulfilled and  
4 in visual proximity, or in the case of an offer conveyed by voice,  
5 in temporal proximity, to the request for consent to the offer.

6 (2) Charge the consumer's credit or debit card or the consumer's  
7 account with a third party for an automatic renewal or continuous  
8 service without first obtaining the consumer's affirmative consent  
9 to the agreement containing the automatic renewal offer terms or  
10 continuous service offer terms.

11 (3) Fail to provide the automatic renewal or continuous service  
12 offer terms, cancellation policy, and information regarding how  
13 to cancel in a manner that is capable of being retained by the  
14 consumer. If the offer includes a free trial, the business shall  
15 disclose how to cancel and allow the consumer to cancel before  
16 the consumer pays for the goods or services.

17 (b) A business making automatic renewal or continuous service  
18 offers shall provide a toll-free telephone number, electronic mail  
19 address, a postal address only when the seller directly bills the  
20 ~~customer~~ consumer, or another cost-effective, timely, and  
21 easy-to-use mechanism for cancellation that shall be described in  
22 the written acknowledgment.

23 (c) In the case of a material change in the terms of the automatic  
24 renewal or continuous service offer that has been accepted by a  
25 consumer in this state, the business shall provide the consumer  
26 with a clear and conspicuous notice of the material change and  
27 provide information regarding how to cancel in a manner that is  
28 capable of being retained by the consumer.

29 (d) The requirements of this article shall apply only prior to the  
30 completion of the initial order for the automatic renewal or  
31 continuous service, except as follows:

32 (1) The requirement in paragraph (3) of subdivision (a) may be  
33 fulfilled after completion of the initial order.

34 (2) The requirement in subdivision (c) shall be fulfilled prior  
35 to implementation of such material change.

36 17603. In any case in which a business sends any goods, wares,  
37 merchandise, or products to a consumer, under a continuous service  
38 agreement or automatic renewal of a purchase, without first  
39 obtaining the consumer's affirmative consent as described in  
40 Section 17602 to automatic renewal offer terms, the goods, wares,

1 merchandise, or products shall for all purposes be deemed an  
2 unconditional gift to the consumer, who may use or dispose of the  
3 same in any manner he or she sees fit without any obligation  
4 whatsoever on the ~~customer's~~ *consumer's* part to the business,  
5 including, but not limited to, bearing the cost of or responsibility  
6 for shipping any goods, wares, merchandise, or products to the  
7 business.

8 17604. (a) Notwithstanding Section 17534, a violation of this  
9 article shall not be a crime. However, all available civil remedies  
10 that apply to a violation of this article may be employed.

11 (b) If a business complies with the provisions of this article in  
12 good faith, it shall not be subject to civil remedies.

13 17605. The following are exempt from the requirements of  
14 this article:

15 (a) Any service provided by a business or its affiliate where  
16 either the business or its affiliate is doing business pursuant to a  
17 franchise issued by a political subdivision of the state or a license,  
18 franchise, certificate, or other authorization issued by the California  
19 Public Utilities Commission (CPUC).

20 (b) Any service provided by a business or its affiliate where  
21 either the business or its affiliate is regulated by the CPUC, the  
22 Federal Communication Commission, or the Federal Energy  
23 Regulatory Commission.

24 (c) Any entity regulated by the Department of Insurance.

25 (d) Alarm company operators, as defined in Section 7590.2,  
26 and regulated pursuant to Chapter 11.6 (commencing with Section  
27 7590) of Division 3.

28 (e) A bank, bank holding company, or the subsidiary or affiliate  
29 of either, or a credit union or other financial institution, licensed  
30 under state or federal law.

31 17606. This article shall become operative on June 1, 2010.